

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 10-IWDUI-264
OC: 05/18/08
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

GAIL C. McCLARNON
714 E. CHESTNUT ST.
CLARINDA, IA 51632-1828

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
ATTN: JOE BERVID
1000 EAST GRAND AVE.
DES MOINES IA 50319-0209

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD

(Administrative Law Judge)

November 30, 2010

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Gail C. McClarnon filed an appeal from an Iowa Workforce Development decision dated March 15, 2010, reference 01, which held she had been overpaid unemployment benefits in the amount of \$3,248.00. The decision stated:

THIS IS DUE TO AN AGENCY ERROR, WHICH ALLOWED YOU TO BE PAID EMERGENCY UNEMPLOYMENT COMPENSATION BENEFITS ON WEEKS THAT WERE NOT ELIGIBLE FOR THAT TYPE OF BENEFIT. THOSE SAME

WEEKS WERE PAID TO YOU AS TRAINING EXTENSION BENEFITS ON
THE 05-17-09 CLAIM.

A hearing was scheduled by way of telephone conference call on October 11, 2010. At the time of hearing it was discovered that Iowa Workforce Development had failed to include Appellant's attorney, Joseph Basque, on the transmittal slip as a person to receive notice even though Mr. Basque had notified IWD he was representing Ms. McClarnon and had sent discovery requests to the agency. The matter was therefore rescheduled for November 29, 2010 and notice sent to all parties and their representatives including Mr. Basque for the Appellant and Joseph Bervid for IWD.

At the time of hearing Mr. Basque appeared on behalf of the appellant. No one appeared for the department. The documents contained in the administrative file were marked as Exhibit A, pages 1-39. Mr. Basque offered an objection to the admission of these documents based on lack of foundation. The objection was sustained and the documents were excluded from evidence.

FINDINGS OF FACT

On March 15, 2010, IWD issued a decision holding Gail C. McClarnon had received an overpayment of benefits on a May 18, 2008 unemployment claim she filed. The department stated the overpayment was in the amount of \$3,248 and was due to agency error. The record is devoid of any evidence supporting that decision.

CONCLUSIONS OF LAW

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.¹

There is a complete lack of evidence in the record to support IWD's decision. This administrative law judge cannot tell whether Ms. McClarnon was overpaid or, if so, how much she was overpaid in benefits. Therefore, agency's decision must be reversed.

DECISION

The decision of the agency dated March 15, 2010, reference 01, is REVERSED. The department shall take any action necessary to implement this decision.

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¹ Iowa Code section 96.3(7).